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doubtedly that a recovery can only be had when the imperfection is of such a nature as to make the highway unsafe for travel by the ordinary modes of conveyance, yet it is an unwarrantable inference for a court to deduce from this rule and incorporate the deduction thus arrived at in a charge to the jury that bicyclists are therefore required to exercise a greater degree of care in detecting and avoiding obstructions in a public road or highway than persons travelling by means of other conveyances. This function rests purely in the province of the jury.

MUNICIPAL CORPORATIONS—TAXES—LICENSE TAXES—PARTIAL INVALIDITY OF ORDINANCE.—Acting under the authorization of Sec. 1, Art. 5, c. 24, Hurd's Rev. Statutes 1909, the city council of Chicago passed an ordinance which classified theaters into five classes and fixed an annual license fee for each, based on the price of admission, exclusive of that charged for box seats. The plaintiffs as owners and operators of various theaters in the city of Chicago, filed their bill praying for an injunction against the enforcement of the above ordinance. A demurrer by the defendant being overruled it elected to stand thereon, and a decree was entered perpetually enjoining the enforcement of § 104 of the ordinance in question. On appeal by the city, *Held,* that the ordinance was valid as imposing a tax for revenue, even if unreasonable as imposing a tax for regulation. *Metropolis Theater Co. et al.* v. *City of Chicago* (1910), — Ill. —, 92 N. E. 597.

The question before the court was as to the validity of that section which classified the theaters on a basis of the admission charged. Since the statute under the authorization of which the ordinance was passed gives the city in clear and explicit terms the power to "license, tax, regulate, suppress and prohibit—theatricals and other exhibitions," it follows that the city has all the power so to do that the legislature would have, which body is subject only to the limitations found in the State Constitution. The State Constitution is moreover supreme in its sphere. The only limitation found in the Illinois Constitution upon the power of the legislature to tax occupations is that the tax shall be "uniform as to the class upon which it operates." An occupation tax in the purview of the United States Supreme Court is not a direct tax but is in the nature of an excise or duty, and if levied uniformly fulfills the requirements of the National Constitution. (Justice FIELD in the *License Tax Cases*). The question arises therefore as to whether a taxing power thus validly given carries with it the power to classify the objects of the tax without destroying uniformity of assessment. This question is an old one and has been decided repeatedly in the affirmative. *Knowlton* v. *Moore,* 178 U. S. 41; *Douglas* v. *People,* 225 Ill. 536, 80 N. E. 341, 8 L. R. A. (N. S.) 1116, 116 Am. St. Rep. 162; *Ould and Carrington* v. *City of Richmond,* 23 Grat. 464. It is agreed that the classification must not be made arbitrarily, but necessarily there must be great freedom of discretion even though it result in ill-advised, unequal, and oppressive legislation, *Heath* v. *Worst,* 207 U. S. 338, 28 Sup. Ct. 114, 52 L. Ed. 236. Exact justice and equality are not attainable, however, and consequently not required; COOLEY, CONT. LIM., Ed. 7, p. 738, *Slaughter* v. *Commonwealth,* 13 Grat.

767; *Eyre* v. *Jacob*, 14 Grat. 422, 434, 435; *State Railroad Tax Cases*, 92 U. S. 575, 23 L. Ed. 663. The court denies that the tax could be supported as a license tax imposed solely for regulation. There is some authority for a contrary view: *City of Philadelphia* v. *W. U. Tel. Co.*, 89 Fed. 454, but see *Postal Telegraph Co.* v. *Taylor*, 192 U. S. 64; *Red C. Oil Mfg. Co.* v. *Board of Agriculture*, 172 Fed. 695. The court lays down the principle that a regulatory license to be valid must bear a reasonable relation to the additional burdens imposed by the business or occupation licensed. This is the better rule in this country today. The chief ground on which the court rests its decision, namely: that the license may be upheld as a revenue measure, is unquestionably sound: *Wiggins Ferry Co.* v. *City of East St. Louis*, 102 Ill. 560; *Howland* v *City of Chicago*, 108 Ill. 496; *People* v. *Steele*, 231 Ill. 340, 83 N. E. 236, 14 L. R. A. (N. S.) 361, 121 Am. St. Rep. 321, and thus even though partially invalid the ordinance may be upheld: *Webber* v. *City of Chicago*, 50 Ill. App. 110; *Foster* v. *City of Alton*, 173 Ill. 587, 51 N. E. 76; *Ives* v. *Chicago, B. & Q. R. R. Co.*, 105 Ill. App. 37.

NEGLIGENCE—INJURY TO CHILD—CONTRIBUTORY NEGLIGENCE OF PARENT.—An infant four years old left home in company with his sister, his parents not knowing where he was going. While running across a street alone, he was struck by an approaching car and killed. In an action for damages for the alleged wrongful death, brought by the father as administrator of the infant's personal estate, *held*, that if plaintiff was guilty of contributory negligence, such negligence might be imputed to the infant. *Feldman* v. *Detroit United Ry.* (1910), — Mich. —, 127 N. W. 687.

This action was brought under sections 10427 and 10428 Comp. Laws, which provide that "the amount recovered in every such action shall be distributed as provided by law for the distribution of the personal estate of persons dying intestate" and "the jury may give such damages as they shall deem fair and just, with reference to the pecuniary injury resulting from such death to those persons who may be entitled to such damages when recovered." The father, as distributee of the infant's estate, was therefore the real beneficiary, and in such a case, by the weight of authority, his contributory negligence should bar the action. *Davis, Admr.* v. *Seaboard Air Line Ry.*, 136 N. C. 115, 48 S. E. 591; *Atch. etc. Ry. Co.* v. *Calhoun*, 18 Okla. 75, 89 Pac. 207; *Ploof* v. *Burlington Traction Co.*, 70 Vt. 509, 41 Atl. 1017, 43 L. R. A. 108. The courts of a few states, however, refuse to allow the indirect benefit to the negligent parent to defeat the action. *Miles* v. *St. Louis, I. M. & S. Ry. Co.* (1909), (Ark.), 119 S. W. 837; *Warren* v. *Manchester St. Ry.* (1900), 70 N. H. 352, 47 Atl. 735; *Wymore* v. *Mahaska Co.*, 78 Iowa 396, 16 Am. St. Rep. 449; *N. & W. R. R. Co.* v. *Groseclose's Adm'r.*, 88 Va. 267, 13 S. E. 454. Where an action for damages for injuries is brought by the infant in his own right, the courts of a majority of the States have repudiated the doctrine of *Hartfield* v. *Roper*, 21 Wend. 615, 35 Am. Dec. 273, and refuse to impute the negligence of a parent to the infant. *Berry* v. *St. Louis, M. & S. E. R. Co.* (1908), 214 Mo. 593, 114 S. W. 27. See 3 MICH. L. REV., p. 166; 4 Id., p. 79.